

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.
OA 1009/2019

Ex Sep Sis Ram
VERSUS

Union of India and Ors.

..... Applicant

..... Respondents

For Applicant : Mr. VS Kadian, Advocate
For Respondents : Mr. V. Krishnan S., proxy for
Mr. Harish V Shankar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER
12.01.2024

Vide our detailed order of even date we have allowed the OA 1009/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Thus, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT. GEN. C.P. MOHANTY)
MEMBER (A)

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HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

The applicant vide the present O.A seeks the reliefs claimed
in Para 8 of the OA, which reads as under:

“

- a) To quash and set aside the impugned letter no-
NER/3165/LC-3 dated 31.05.2019 and/or*
- b) Direct respondents to grant disability pension to the
applicant by treating his disability as attributable to or
aggravated by military service and grant disability pension
with benefits of rounding off/ broad banding. And/or*
- c) Direct the respondents to grant invalid pension/ disability
pension. And/or*

- d) *Direct the respondents to pay due arrears from the date of invalid medical board out with interest @12% p.a. with all the consequential benefits. And/or*
e) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. The applicant was enrolled in the Indian Army in the Pioneer Corps on 20.01.1962 and was discharged from service at his own request on 13.10.1964. The applicant subsequently got enrolled in the DSC on 04.04.1966 and was invalided out from service on 25.03.1970.

3. The applicant preferred an appeal cum legal notice vide letter dated 10.01.2019 which was rejected by the respondents vide Records letter No. NER/3165/LC-3 dated 31.05.2019 opining "that the minimum period of qualifying service required for grant of Invalid Pension is 10 years, otherwise only Invalid Gratuity shall be admissible. Since, you have rendered less than 10 years service in DSC and accordingly you were granted **Invalid Gratuity of Rs. 410/- at the time of boarding out.**" Aggrieved by which the applicant has filed the instant O.A. and thus, in the interest of justice under Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. It was submitted on behalf of the applicant that the applicant was invalided out from service on 25.03.1970 on medical grounds due to

permanent low medical category "CEE" which was due to stress and strain of service.

5. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Tribunal in the case of *Ex Sep Bhagat Singh v. Union of India* in OA no. 1051/2016 dated 16.12.2018 to contend that the applicant cannot be denied the benefits of Invalid Pension on the ground of non qualifying minimum service of pension.

6. The applicant further placed reliance on the verdict of the Hon'ble Supreme Court in *Union of India v. Manjit Singh*, 2015 (5) SLR 372 to submit that the provision of payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out of service even if they have not completed their tenure.

7. The applicant further placed reliance on the verdict of the Hon'ble Supreme Court in the case of *Sukhvinder Singh v. Union of India*, 2014 STPL (WEB) 468 SC, decided on 25.06.2014, wherein it was observed as under :

"....

We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the members of the Armed Forces; any other conclusion would be

tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

....”

8. The learned counsel for the respondents however, submits that the applicant was invalided out from service on 25.03.1970, after rendering only 6 and a half years of service in both the services.

9. The respondents submit that the applicant filed the instant O.A. after more than 49 years of having been discharged from service of the DSC on 26.03.1970 and thus, the instant OA be dismissed on the ground of delays and laches.

10. It was further contended on behalf of the respondents that apart from the impugned letter dated 31.05.2019, there was nothing to indicate that the applicant had been invalidated out from service of the DSC.

ANALYSIS

11. On the perusal of the material available on record and the Long-Roll produced by the respondents on 27.10.2023 and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the applicant was invalided out on medical ground from service on 25.03.1970, after rendering 3 years, 11 months, 21 days of service, in low medical category 'CEE' due to the disability. The applicant was a non-pensioner and his service records are stated to have been destroyed after the retention period of 25 years as per Para 592 to 596 of the Pension Regulation for the Army, 1987 (Revised Edition) as averred by the respondents through their counter affidavit.

12. During the course of arguments, the applicant, through his counsel, confined the prayer made vide the present OA for the grant of invalid pension alone.

13. We hold that the applicant is entitled to invalid pension, as the applicant was enrolled in the DSC on 04.04.1966 and was invalided out from service on medical grounds on 25.03.1970. The respondents with effect from 01.01.1973 had withdrawn the condition of service, for a particular number of years by a soldier. The Armed Forces Personnel retiring prior to 01.01.1973, irrespective of the period for which they served in Armed Forces were held entitled to the service element.

14. It is essential to advert to the MoD letter No. 12 (28)/2010-D(Pen/Pol) dated 10.02.2014, which reads as under:-

12(28)/2010-D (Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-servicemen Welfare

Dated: 10th February 2014

To
The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff

Subject:- Grant of Service element of disability pension to pre 1.1.1973 invalided out JCOs, ORs and NCs(E)/Sailor/Airmen when the accepted degree of disablement re-assessed as less than 20% reg

Sir,

The undersigned is directed to refer to Regulation 186 of Pension Regulations for the Army Part-1 (1961) and equivalent provisions in the Pension Regulations for the Navy & Air Force, which provides that in case of personnel below officer rank granted disability pension on invalidment due to disabilities attributable to or aggravated by military service but whose accepted degree of disability subsequently falls below 20%, the service element of disability pension was made permanent provided the qualifying service rendered by the individual was 10 years or more (15 years in case of NCs(E)). The requirement of rendering stipulated qualifying service for continuance of service element was further relaxed to 5 years for the Individuals who were invalided out of service on or after 1.3.1968 vide this Ministry's letter No.1(4)/68/1035-A/S/D (Pension / Services) dated 30.10.1968. In Implementation of the Government decisions on the recommendations of Third Pay Commission vide SAI 4/S/75, the condition of having minimum service for continuance of service element, when disability was re-assessed as less than 20% was abolished in those cases where the invalidment occurred on or after 1.1.1973. Due to the above said stipulation of having prescribed service for continuation of service

element, pre-1.1.1973 Invalided out cases erstwhile in receipt of disability pension, were disallowed service element of disability pension and subsequently family pension also, where the disability was accepted as less than 20% in subsequent re-assessment(s).

2. Based on various representations from such personnel and their families for continuance of service element of disability pension and/or grant of family pension, the matter has been considered by the Government. The President is now pleased to decide that condition prescribed prior to 1.1.1973 for continuance of service element with reference to minimum stipulated qualifying service, in cases where the accepted degree of disability subsequently fell below 20%, shall be dispensed with from 1.1.1973 or the date from which the accepted degree of disability fell below 20%, whichever is later. The NOK of such invalided out personnel who at the time of invalidment were in receipt of disability pension and subsequently died, shall also be entitled for family pension from the date following the date of death of the individual.

3. The service element of disability pension /family pension in terms of these orders shall accordingly be notified by the Pr. CDA (Pensions), Allahabad. For this purpose, each affected personnel below officer rank who was invalided out prior to 1.1.1973 and initially granted disability pension but the same discontinued as their accepted degree of disability fell below 20% at the time of re-assessment, shall submit an application in the format enclosed as Annexure to this letter to the PSAs concerned through their Pension Disbursing Agencies and Record Office. In cases where the pensioner was alive as on 1.1.1973 or date of discontinuance of disability pension which is later and died subsequently, his heir(s) shall be paid life time arrears on account of service element of disability pension accrued in terms of these orders as per the prevailing Instructions on the subject. For this purpose, eligible heir(s) of the deceased pensioner may also apply to the Pension Disbursing Agencies of the deceased pensioner,

4 The Record Offices may, however, also identify the affected cases and take necessary action after obtaining relevant information required from the pensioners for notification of their awards.

5. Further implementation instructions to all concerned will be issued by Pr. CDA (Pensions), Allahabad, Immediately on receipt of these orders.

6. This issues with the approval of the Ministry of Defence (Finance) vide their L.D.No.10(4)/2012/FIN/PEN dated 16.01.2014.

7. Hindi version will follow.

Yours faithfully,
MNarayaras
(Malathi Narayanan)

Under Secretary to the Govt. of India

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15. The verdict of the Hon'ble Supreme Court in *Union of India Vs. Sinchetty Satyanarayan*, SLP(Civil) No. 20868 of 2009, further lays down to the effect:-

"...

Now, in view of the order which has been placed on record in which it has been decided by the Government that the benefit of service element would be granted to all similarly placed persons with effect from 1.1.1973, no further directions are necessary. The special leave petition is disposed of.

IN ALL OTHER REMAINING SLPs AND CIVIL APPEALS:

Delay condoned.

Learned counsel appearing for Union of India has drawn our attention to the order dated 22.2.2012 passed by the Ministry of Defence which reads as under:

"MINISTRY OF DEFENCE

Department of Ex-Servicemen Welfare

Subject: SLP No.20868/2009 titled UOI Vs Ex Gnr

Sinchetty Satyanarayan & 42 Others

The issue regarding grant of service element to those invalidated out prior to 1973 with less than minimum qualifying service for pension as prescribed from time to time, has been considered in the Ministry and with the approval of Hon'ble RM it has been decided to grant the benefit of service element to all pre 1973 cases w.e.f. 1.1.1973.

2. OIC Legal Cell (Supreme Court) may take appropriate action to file the reply affidavit in the matter in the Hon'ble Supreme Court.

Sd/

(Ajay Saxena)

Under Secretary/D(Pen/Legal)

Tele: 23015021"

Learned counsel appearing for Union of India submits that now the Government of India has taken a decision that the respondents and other similarly placed persons would be entitled to the benefit of service element of pension with effect from 1.1.1973. No further directions are necessary.

All the special leave petitions and civil appeals are disposed of accordingly."

16. Further, vide order dated 07.07.2023 in OA 2240/2019 in the case of **Lt AK Thapa (Released) v. UOI & Ors.**, it has been observed vide Para-27 thereof to the effect:-

"27. In view of the law laid down by the Hon'ble Supreme Court in Sukhvinder Singh(Supra) and in Balbir Singh(Supra) on invalidment, the personnel of the Armed Forces who is invalidated out is presumed to

have been so invalidated out with a minimum of twenty percent disability which in terms of the verdict in Sukhvinder Singh(Supra) is to be broadbanded to 50% for life, the incorporation by the respondents vide the MoD letter dated 16.07.2020 of a term of a necessary permanent incapacity for civil re-employment, is an apparent overreach on the verdict of the Hon'ble Supreme Court in Sukhvinder Singh(Supra). Furthermore, the said clause of a requirement of an Armed Forces Personnel to be permanently incapacitated from Military service as well as Civil re-employment is wholly vague and arbitrary and does not take into account the extent of incapacity for Civil re-employment. This is so for the personnel of the Armed Forces who is invalidated out with all limbs incapacitated may still have a functional brain and functional voice, may be able to speak, sing, paint and earn a livelihood. The utilisation of the words 'permanently incapacitates from civil re-employment', apparently requires a permanent brain dead armed forces personnel. We thus hold that the requirement of the Armed Forces Personnel 'to be permanently incapacitated from civilian employment as well' (apart from permanent incapacitation from military service) for the grant of invalid pension in terms of the MoD letter No. 12(06)/2019 /D (Pen/Pol) dated 16.07.2020 to be wholly arbitrary and unconstitutional and violative of Article 14 of the Constitution of India which is in Part-III of the Fundamental Rights with the sub heading thereto of 'Right to Equality', and lays down to the effect:-

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 21 of the Constitution of India lays down to the effect:-

“21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 21 protects the Right to Livelihood as an integral facet of the Right to life as laid down by the Hon’ble Supreme Court in Narender Kumar Chandla Vs. State of Haryana, 1995 AIR 519 and the right to life is one of the basic human rights which even the State has no authority to violate, except according to procedure established by law.”,

Further vide order dated 25.09.2023 in OA 517/2021 in *Ex Sep Narayan Singh vs. UOI & Ors.* vide Para-16 thereof, it has been held by this Tribunal to the effect:-

“That the requirement of the Armed Forces Personnel to be permanently incapacitated from civil re-employment as well (apart from permanent incapacitation from military service) for the grant of the Invalid pension in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, is wholly arbitrary and unconstitutional and violative of Article 14 and Article 16 of the Constitution of India and the said requirement has thus been set aside thereby.”

Thus in the instant case, the applicant who was invalided out from service on 23.03.1973, is held entitled to the grant of invalid pension from the date of his invalidment in view of the verdict of the Hon’ble Supreme Court in *Balbir Singh Vs UOI & Ors.* in Civil Appeal no. 3086/2012 vide verdict dated 08.04.2016.

CONCLUSION

17. The applicant is thus held entitled to invalid pension in the instant case despite the fact that he had not completed the qualifying length of service of ten years.

18. The respondents are thus, directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in *Union of India & Ors. v. Tarsem Singh 2009 (1) AISLJ 371*, arrears of invalid pension will be restricted to commence to run from three years prior to the date of filing of O.A. 1009/2019

Pronounced in the open Court on this day /2nd January, 2024.

[LT GEN C. P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/Nikita/